Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Text

CONFIDENTIAL

PAGE 01 STATE 081956

64
ORIGIN EUR-25

INFO OCT-01 ISO-00 L-03 IO-14 SAJ-01 ACDA-19 SSO-00 NSCE-00

USIE-00 INRE-00 CIAE-00 DODE-00 PM-07 H-03 INR-10

NSAE-00 NSC-07 PA-04 RSC-01 PRS-01 SP-03 SS-20 NIC-01

/120 R

DRAFTED BY EUR/CE JGGREENWALD/NCLEDSKY:RF
APPROVED BY EUR MR. STABLER
EUR/CE:SGEORGE
EUR/CE:GRUECKERT
L/EUR:DSMALL
---------- 017955
O R 230002Z APR 74
FM SECSTATE WASHDC
TO AMEMBASSY BONN IMMEDIATE
USMISSION BERLIN
INFO AMEMBASSY MOSCOW
AMEMBASSY PARIS

C O N F I D E N T I A L STATE 081956

E.O. 11652: GDS
TAGS: PGOV, WB, GW, GE
SUBJECT: BRUECKMANN CASE
REF: A. BONN 6235
B. BERLIN 672
C. BERLIN 602

1. DEPT. SHARES USBER DESIRE FOR MAXIMUM FLEXIBILITY IN BRUECKMANN CASE, BUT IS CONCERNED LEST FEDERAL CONSTITUTIONAL COURT'S DECISION AND REACTION BY BERLIN OPINION MAKERS SUBSTANTIALLY CIRCUMSCRIBE TRIPARTITE FREEDOM OF ACTION. IF KARLSRUHE DECISION IS ALLOWED SET PATTERN FOR FUTURE, WE WOULD ASSUME CONSTITUTIONAL COURT WOULD HEAR APPEALS FROM BERLIN CASES, WOULD PASS ON CONSTITUTIONALITY OF LAWS CONCERNED, AND WOULD STATE PRINCIPLES FOR DETER-
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 081956

MINING WHETHER LAW WAS APPLIED IN CONSTITUTIONAL MANNER BY

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

BERLIN AUTHORITIES. EVEN IF KARLSRUHE GAVE NO DIRECT INSTRUCTION TO BERLIN COURTS OR OFFICIALS IN EFFORT TO STAY WITHIN ALLIED RESERVATION, BERLIN COURTS WOULD ALMOST CERTAINLY COMPLY WITH SUBSTANCE OF SUCH FRG "ADVISORY" OPINIONS. THIS WOULD ESTABLISH IN JUDICIAL AREA INDIRECT PROCESS SIMILAR TO THAT BY WHICH FRG LEGISLATION IS TAKEN OVER IN BERLIN BY ACTION OF BERLIN LEGISLATIVE BODY.

2. IN THE ABSTRACT THIS MIGHT BE RATIONALIZED AS BEING IN BEST INTERESTS OF BERLIN. IT WOULD, HOWEVER, ALTER BASIC RESERVATION LODGED BY ALLIES IN EARLY 1950'S TO EFFECT THAT FEDERAL CONSTITUTIONAL COURT HAS NO COMPETENCE FOR BERLIN MATTERS. CITATION OF NIEKISCH CASE AIDE MEMOIRE ON CONSTITUTIONAL COURT,IN LETTER OF ALLIED AMBASSADORS TRANSMITTING QA TO FRG CHANCELLOR, COMMITS US TO AVOID UNILATERAL CHANGE IN THIS AREA TO BEST OF OUR ABILITY.

3. RECENT KARLSRUHE DECISION MUST ALSO BE VIEWED IN LIGHT OF LIKELY OUTCOME OF BRUECKMANN'S FIGHT TO AVOID EXTRA-DITION TO GDR. IF KAMMERGERICHT REVERSES ITSELF AND PERMITS BRUECKMANN TO STAY IN WEST BERLIN, REGARDLESS OF WHETHER OR NOT IT CITES KARLSRUHE OR STRASBOURG DECISION, SOVIETS (AND GDR) WILL DOUBTLESSLY CHARGE WESTERN VIOLA-TION OF QUADRIPARTITE AGREEMENT. WE ARE LIKELY TO FIND OURSELVES FACED WITH FOLLOWING UNAPPEALING ALTERNATIVES IF WE SIT BACK AND DO NOTHING UNTIL AFTER BERLIN COURTS ACT. WE MIGHT HAVE TO:

A. ORDER SENAT TO DISREGARD KARLSRUHE DECISION AND REHEARING. SERIOUS POLITICAL RECRIMINATIONS FOR EXTRA-DITING GIRL WOULD THEN FALL ON ALLIES RATHER THAN SENAT.

B. RESIST SOVIET ALLEGAIONS THAT QA HAS BEEN VIOLATED THROUGH CHANGE IN BASIC FRG-BERLIN RELATIONSHIP, EVEN THOUGH IN THIS CASE WE WOULD SHARE MANY OF SOVIET MISGIVINGS.

C. TAKE ACTION TO DEMONSTRATE OUR DISAPPROVAL OF KARLSRUHE DECISION, WITHOUT SEEKING TO FORCE EXTRADITION OF BRUECKMANN TO GDR, WHICH WOULD BE INTERPRETED AS CONFIDENTIAL

CONFIDENTIAL

BOWING TO SOVIET PRESSURE.

4. ANOTHER DANGER IS THAT EVEN IF WE DO WHAT BRITISH HAVE SUGGESTED, NAMELY RESTATE OUR POSITION AND THEN HAVE KAMMERGERICHT AVOID DIRECT REFERENCE TO KARLSRUHE DECISION, BERLIN AUTHORITIES COULD CONSIDER THAT WE HAD SUBSCRIBED TO THEIR VIEW THAT BERLIN COURT COULD TAKE INDIRECT NOTICE OF KARLSRUHE RULING IN BERLIN CASE. THEY

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

WOULD THEN CONSIDER THAT WE SHOULD DEFEND THEIR ACTION VIGOROUSLY AGAINST SOVIET PROTEST.

5. SITUATION SEEMS TO US, THEREFORE, TO REQUIRE DEVELOPMENT OF SOMEWHAT MORE DEFINITE ALLIED POSITION. WE WOULD WISH TO ASCERTAIN WHETHER AND WHEN SENAT EXPECTS KAMMERGERICHT TO GRANT REHEARING. AT SUCH TIME AS KAMMERGERICHT TAKES UP CASE, WE BELIEVE IT WOULD BE DESIRABLE FOR ALLIES TO RESTATE THEIR POSITION CLEARLY FOR RECORD AND TO TAKE SUCH ACTION AS IS FEASIBLE IN BERLIN TO PREVENT ESTABLISHMENT OF NEW ROLE FOR CONSTITUTIONAL COURT IN BERLIN MATTERS. TO THIS END, FOLLOWING AGREEMENT IN BONN GROUP.WE WOULD WISH THREE MISSIONS TO TAKE FOLLOWING ACTION:

A) HAVE SENAT INTRODUCE STATEMENT TO KAMMERGERICHT, EITHER ITSELF OR THROUGH PUBLIC PROSECUTOR, THAT ALLIES MAINTAIN THEIR VIEW THAT CONSTITUTIONAL COURT HAS NO COMPETENCE FOR BERLIN MATTERS. KAMMERGERICHT SHOULD, THEREFORE, TAKE NO ACCOUNT OF KARLSRUHE DECISION IN CONSIDERING BRUECKMANN APPEAL.

B) ISSUE BK/O FORBIDDING COURTS TO TURN OVER DOCUMENTS TO KARLSRUHE IN BERLIN CASE WITHOUT ALLIED AUTHORIZATION OR FROM STAYING EXECUTION OF DECISION IN ORDER TO PERMIT APPEAL TO KARLSRUHE.

6. IF ACTION OUTLINED PARA FIVE ABOVE IS TAKEN BEFORE DISPOSITION OF CASE, IT WOULD STILL BE POSSIBLE THAT EITHER KAMMERGERICHT OR STRASBOURG WILL EVENTUALLY FIND MEANS TO KEEP GIRL IN WEST BERLIN, AND THAT KARLSRUHE WILL FIND MEANS TO ISSUE ADDITIONAL ADVISORY OPINIONS ON BERLIN CASES. WE WOULD, HOWEVER, BE BETTER POSITIONED TO CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 081956

AVOID CHARGES THAT WE HADYIELDED TO SOVIET PRESSURE OR TO REBUT SOVIET ACCUSATIONS OF BAD FAITH IN IMPLEMENTATION OF QA. IF SOVIETS OR EAST GERMANS WISHED TO PRESS COMPLAINTS ABOUT KARLSRUHE ROLE IN WEST BERLIN AFFAIRS, WE WOULD BE ABLE TO DEMONSTRATE WE HAD DONE ALL WE COULD AND TO REFER THEM TO FRG SINCE WE HAVE NO CONTROL OVER ACTIONS OF CONSTITUTIONAL COURT. KISSINGER

CONFIDENTIAL

NNN

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, TRIALS, BERLIN TRIPARTITE MATTERS, COURTS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 APR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE081956
Document Source: CORE
Document Unique ID: 00
Drafter: RF
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740094-0354
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740421/aaaaasgo.tel
Line Count: 161
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A. BONN 6235
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 22 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 APR 2002 by boyleja>; APPROVED <26 MAR 2003 by BoyleJA>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BRUECKMANN CASE
TAGS: PGOV, WB, GE, GC, (BRUECKMANN, INGRID)
To: BONN BERLIN
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005